IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

THURSDAY, THE 29TH MARCH 2007 / 8TH CHAITHRA 1929

CRL.A.No. 1824 of 2006()

ST.555/2004 of CHIEF JUDICIAL MAGISTRATE COURT, THIRUVANANTHAPURAM
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APPELLANT: COMPLAINANT

SHAJI JOHN JOSEPH,
S/O. JOSEPH GOPINATHAN NAIR, BEACH VILLA,
KOSHY ROAD, VALIATHOPPE, VALLAKADAVU P.O.,
THIRUVANANTHAPURAM-8,, REP. BY
POWER OF ATTORNEY . HOLDER, PHILIP DOMIC, S/O.
A.J.ABRAHAM, AGED 51, T.C.34/933, OFF.BEACH ROAD,
VALIATHOPPE, THIRUVANANTHAPURAM-8.

BY ADV. SRI.S.MOHAMMED AL RAFI

RESPONDENTS: ACCUSED & STATE
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1. JOHN JEFFRY TEMYSON,
T.C.34/854, JOHN ANN ASHRAM,
KOSHY ROAD, VALIATHOPPE, VALLAKADAVU P.O.,
THIRUVANANTHAPURAM-8.

2. STATE OF KERALA, REP. BY
PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. SRI.BLAZE K.JOSE FOR R1
P.P.SRI.K.G.BHASKARAN FOR R2

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 29/03/2007,
ALONG WITH CRL.A.No.1831/2006, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

K. Thankappan, J.

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Crl.A. Nos. 1824 & 1831 of 2006

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Dated this the 29th day of March, 2007

JUDGMENT

These two appeals are filed against the judgment passed in S.T.Nos.554 and 555 of 2004 on the file of the Court of the Chief Judicial Magistrate, Thiruvananthapuram. In the above two cases the complainant and the accused are one and the same and hence the trial court tried both the cases together and by a common judgment the trial court acquitted the 1st respondent in both the cases.

2. In the complaints filed by the appellant it is stated that the 1st respondent borrowed Rs.1,00,000/- and Rs.1,50,000/- from him and in discharge of the said debt, the 1st respondent issued Exts.P1 and P6 cheques in favour of him. It is also stated that when the cheques were presented for encashment, they were bounced on the ground of insufficiency of funds in the account of the 1st respondent. To prove the case, the appellant himself was examined as PW1 and Exts.P1 to P10 were marked. After closing the prosecution evidence, the 1st respondent was questioned under section 313 Cr.P.C. He denied the transaction and stated that there was no transaction between him and the appellant. He also stated that the cheques in question

were issued towards the security in connection with a property transaction. To prove his case, he himself was examined as DW1 and Exts.D1 to D6 were produced. Exts.X1 to X2(a) were also marked as court Exhibits. After the trial, the trial court found that the appellant had not proved that Exts.P1 and P6 cheques had been drawn towards the discharge of any legally enforceable debt as per section 138 of the Negotiable Instruments Act. The trial court also held that the 1st respondent had rebutted the presumption under section 139 of the Negotiable Instruments Act.

2. Heard.

3. The learned counsel for the appellant contended that the trial court had committed serious error in accepting the defence evidence in toto.

4, After considering the evidence of DW1, the trial court found that the case of the defence that Exts.P1 and P6 cheques were handed over to the appellant towards security as blank cheques in connection with the sale deed executed in respect of the appellant in support of the landed property owned by the wife of the 1st respondent and the appellant was having the habit of purchasing the property involved in legal dispute had been proved beyond reasonable doubt. The trial court also found that the appellant had disposed of the above property, but the cheques were not returned to the 1st respondent. It has come out in evidence that the appellant himself had

admitted the property transaction took place between him and the 1st respondent. It is also admitted by the appellant that the cheques in question were given ante-dated cheques and they were presented after the lapse of one year from the date of receipts of the cheques.

5. In the above circumstances, this Court is of the view that the trial court is fully justified in acquitting the 1st respondent under section 255(1) Cr.P.C. and the above finding requires no interference by this Court. Hence, the appeals are dismissed.

K.Thankappan,
Judge.

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K. Thankappan,J.

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Crl.A.Nos.1824 & 1831/2006

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Judgment

29-3-2007